

# THE PHILADELPHIA DELINQUENCY/DEPENDENCY CROSSOVER COURT

**Crossover Court** is a centralized Family Court program in Philadelphia County which addresses both the delinquent and dependent issues of juveniles. The Administrative Judge for Family Court designates the judge who presides over Crossover Court.

**History:** In Philadelphia County, Family Court is divided into two branches: Delinquent Court and Dependent Court. Historically, the Delinquent and Dependent Courts co-existed with very little interaction. This was a problem inasmuch as many juveniles in the Philadelphia Family Court system presented with both delinquent and dependant issues, and had open petitions in both Delinquent and Dependent Court. With the Delinquent and Dependent Courts operating autonomously, scarce resources were wasted. Different Judges working to address the needs of the same child sometimes replicated services or worse yet, worked at cross-purposes. After recognizing the need to address these cases in a special way, the Philadelphia District Attorney's Office, the Defender Association of Philadelphia, and the Honorable Kevin M. Dougherty, Administrative Judge of Philadelphia County's Family Court, met and fashioned a solution. From these meetings, "Crossover Court" was created.

**Purpose:** Crossover Court was created to effectively and efficiently address the special needs of certain juveniles who have both delinquent and dependent issues.

**Dependent Children:** Dependent children are those children who present to Family Court with neglect, abuse, truancy, housing and/or mental health issues. Common dependency issues include: children who are chronically truant; children who have been abused or whose caregivers (for whatever reason) are unable to or refuse to provide adequate care for the child; children who have no caregivers; children suffering from unaddressed medical issues; and, children suffering from mental illness and/or behavioral problems to the extent that they are unable to properly socialize in the home, school or community. Dependency issues, while potentially detrimental to the health, safety and socialization of the child, do not rise to the level of delinquency because the child's conduct is not criminal.

When addressing dependency issues, the Court's duty is to ensure that the child is safe and his/her needs are being met. The Court is legally obligated, whenever possible, to provide for the safety and needs of a dependent child within the confines of the existing family structure. This is done by providing school, family and/or individual support services to the child and his family in the home. Such services include Wrap-Around and TSS services in the classroom, mobile family and individual therapy in the home, and mentoring programs. In such cases, custody remains with the parent, supervised under the watchful eye of the Court and the Department of Human Services (DHS).

However, where it is not possible to ensure the safety of the child within the confines of the home, the Court will remove the child from the home and award custody of the child to DHS.

DHS is then entrusted with ensuring the safety of the child. Even when this most drastic step is taken, the goal, at least initially, is usually re-unification of the family once the Court determines that the parent(s) are able to adequately provide for the child's needs.

**Delinquent Children:** Delinquent children are those children who: 1) engage in conduct, which if committed by an adult would be criminal; and, 2) are in need of "treatment, rehabilitation and/or supervision" (hereinafter, "TRS"). This second requirement is important because some children engage in delinquent conduct but are not in need of TRS. Unless and until a Judge determines that a child is in need of TRS, the child is not adjudicated delinquent and no juvenile justice consequences arise.

**Crossover Court:** By identifying those juveniles who present with both dependent and delinquent issues, and then moving these cases into Crossover Court, the Philadelphia Family Court has made it possible for a single judge to handle all of a child's Family Court issues rather than inefficiently using two judges to address the same child's needs.

**Criteria for Selecting Cases:** As a general rule, Crossover Court will only accept children under the age of 18 who agree to remain under supervision beyond their 18th birthday. This rule is required because a child may only be adjudicated dependent before reaching the age of 18, and can only be supervised and treated as a dependent beyond the age of 18 at the child's request. However, on rare occasions, a child who is dependent and over the age of 18 may be accepted into the program as long as he or she agrees to remain under court supervision.

Every child is individually evaluated on a case-by-case basis. The main criteria for transferring a child's petitions to Crossover Court are the existence of an open delinquent petition(s) and current dependency issues, **as described within this protocol**. It is not necessary that the child have an open dependency petition on the date of arrest.

Each case is reviewed by the Commonwealth to ensure that dependency consideration is appropriate in the face of a pending delinquency allegation. Violent felonies and cases involving handguns are not appropriate for crossover consideration. Felony sex offenses are also inappropriate. Moreover, no case can receive crossover treatment without the agreement of the Commonwealth. The Juvenile Act requires the Court to determine whether the juvenile is in need of treatment, supervision or rehabilitation no later than 60 days after a finding that the juvenile committed the acts charged. This 60 day limit "may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth." 42 Pa.C.S. § 6341 (b) (emphasis added). If the case is deemed to be appropriate by the Commonwealth, the prosecution agrees to defer the issue of delinquency while the dependency issues are addressed. The juvenile agrees that by entering the Crossover Court he or she will not be allowed to withdraw his/her admission.

**Procedure:** Because of the often dire circumstances of these cases, referrals should be brought to the attention of the Commonwealth at or before the pre-trial hearing when the juvenile has been released upon arrest or as soon as possible after the detention hearing when the juvenile has been held. The vast majority of petitions accepted into Crossover Court will be resolved by the juvenile making an admission to the appropriate offenses. Only in rare circumstances will a case

be accepted into Crossover Court following an adjudicatory hearing where evidence has been presented.

When agreed to by the parties, a stipulated trial may be conducted at the pretrial hearing to determine which charges are appropriate.

Whenever additional information is needed to determine if a case is eligible for Crossover Court, the case will be continued to a Wednesday in the pre-trial room when the Defender Association's Crossover attorney is present to review the case.

Adjudicatory hearings cannot be listed in Crossover Court. The Delinquency Judge assigned to the petition will be advised by the parties that the Commonwealth agrees to crossover treatment. He or she will then preside over the admission and re-list the matter in Crossover Court for disposition. If there is no open dependency petition at the time of the admission, the Delinquency Judge will order DHS to open a file and/or evaluate the child's current condition. In this way, by the time the case reaches Crossover Court, the focus will be on the mental health and social needs of the child without the burden of dealing with the adjudicatory hearing issues at the same time.

The delinquency petition will remain open until all the primary services and/or programs prescribed for the juvenile are in place and the juvenile has been in compliance for 30 days. Thus, if the juvenile begins services 15 days before the first Crossover Court date and remains in compliance for 30 days, the delinquency petition could be discharged as early as 15 days after the first Crossover Court date. Once the dispositional plan has been established and the juvenile has demonstrated compliance, the delinquency petition will be dismissed and the Commonwealth will be permitted to re-open the delinquency matter upon cause shown for up to six months from the date of the dismissal.

Crossover participants may have their delinquent petitions re-opened for chronic or serious misconduct. Procedurally, the Assistant District Attorney (ADA) will ask the judge to schedule a "show cause" hearing at which time the prosecutor will provide notice to the Assistant Defender or other defense counsel. The prosecutor must produce evidence sufficient to convince the judge that termination from Crossover Court and an adjudication of delinquency are required. Prior to making the decision to move to a "show cause" hearing, the ADA must review the entire behavioral record of the juvenile in the program. The attorney representing the juvenile must also carefully review the juvenile's entire history. The attorney will be given an opportunity to argue against termination by presenting evidence in support of the juvenile's continued participation in Crossover Court.

If the juvenile was represented by private counsel at the adjudicatory hearing, private counsel will be notified in advance of the "show cause" hearing and be required to represent the juvenile at the "show cause" hearing. If the juvenile was represented by the Defender Association at the adjudicatory hearing, the Assistant Defender will represent the juvenile at the "show cause" hearing. If the judge finds that there is sufficient evidence to terminate the juvenile's participation in Crossover Court, the juvenile will be adjudicated delinquent and subjected to a delinquent disposition, including possible commitment to a delinquent facility. If the judge does

not find that sufficient evidence exists to support termination, the judge shall retain the juvenile in the program and dismiss the Commonwealth's motion.

Infractions that fall short of warranting termination shall be addressed with graduated sanctions such as in home detention, respites and extending the six month period during which the delinquent petition can be re-opened. If the juvenile remains in compliance and is arrest free 18 months after the delinquent petition is dismissed the Commonwealth will agree to the expungement of the arrest record.

If a juvenile is found to have committed an offense that occurred after his or her entry into Crossover Court, a "show cause" hearing will be automatic with a presumption that the grounds are sufficient for termination. Likewise, if a participant incurs a bench warrant for his or her failure to appear in court and fails to surrender or come into custody within 21 days of its issuance, a "show cause" hearing will be automatic with a presumption that the grounds are sufficient for termination.